

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

JOINT APPLICATION OF LOUISVILLE GAS	)	
AND ELECTRIC COMPANY AND KENTUCKY	)	
UTILITIES COMPANY FOR A CERTIFICATE OF	)	
PUBLIC CONVENIENCE AND NECESSITY AND	)	CASE NO.
SITE COMPATIBILITY CERTIFICATE FOR THE	)	2011-00375
CONSTRUCTION OF A COMBINED CYCLE	)	
COMBUSTION TURBINE AT THE CANE RUN	)	
GENERATING STATION AND THE PURCHASE	)	
OF EXISTING SIMPLE CYCLE COMBUSTION	)	
TURBINE FACILITIES FROM BLUEGRASS	)	
GENERATION COMPANY, LLC IN LAGRANGE,	)	
KENTUCKY	)	

O R D E R

On November 22, 2011, Sierra Club and the Natural Resources Defense Council (“NRDC”) (collectively “Petitioners”) filed a petition for full intervention in the instant matter. Petitioners assert that they are seeking intervention to ensure that their members’ interests in lower cost and cleaner energy options are fully represented. Petitioners further assert that they have gained significant expertise in the areas of energy efficiency, demand side management, and renewable supply options in proceedings throughout the country. Petitioners seek to bring such expertise to the instant proceeding.

Petitioners state that “Sierra Club is one of the oldest conservation groups in the country with over 625,000 members nationally in sixty-four chapters in all fifty states including the District of Columbia and Puerto Rico.” There are over 5,000 members in the Cumberland Chapter, the Sierra Club’s Kentucky chapter, which has five groups

including a Northern Kentucky group and a Bluegrass group. The Cumberland Chapter's address is P.O. Box 1368, Lexington, Kentucky 40588-1368.

NRDC is a national non-profit environmental organization with its headquarters in New York. Over its 40-year history, NRDC has promoted efforts associated with energy efficiency and renewable energy and has worked to protect air and water quality. NRDC states that it has 2,942 members in Kentucky, many of whom reside in the service areas of Louisville Gas and Electric Company's ("LG&E") and Kentucky Utilities Company's ("KU") (collectively "Companies") service territories and/or live near the two Companies' power generating plants. NRDC's Midwest Office's address is 2 North Riverside Plaza, Suite 2250, Chicago, Illinois 60660.

In support of their request, Petitioners maintain that they will present issues and develop facts that will assist the Commission in fully considering the matter without unduly complicating or disrupting the proceedings at bar. Petitioners note that the matter "involves complex questions regarding whether natural gas fired facilities represent the least cost option to replacing the coal units that the Companies are retiring." If granted intervention, Petitioners would ensure that the appropriate energy efficiency and renewable resource alternatives were considered by LG&E and KU. Petitioners assert that they "have extensive experience in resource planning, analyzing the potential for cost effective energy efficiency, and in the laws and regulations regulating energy production." Petitioners state that they would provide testimony addressing LG&E and KU's least cost options "in light of the full range of regulatory, capital, operating, and fuel costs that the Companies' plants face, whatever need exists, and the increasing availability of low cost energy efficiency and renewable energy

alternatives.” Petitioners contend that they will apply their expertise to provide current data and analysis to test the accuracy of LG&E and KU’s proposed requests and present evidence and arguments in support of energy efficiency and renewable energy resources should those alternatives prove to be reasonable and prudent. Further, Petitioners assure that their participation will not disrupt the proceedings as they are represented by experienced counsel and will comply with all deadlines established by the Commission.

Petitioners argue that they have a special interest that is not otherwise adequately represented in this matter. Petitioners note that they have members who are customers and ratepayers of LG&E and KU and that these members help fund the Companies’ operations and are impacted by the operational decisions that the Companies make. Specifically, Petitioners state that their interest is in the promotion of energy efficiency and renewable energy sources as the most reasonable and cost-effective way for LG&E and KU to provide electric services while complying with emerging federal regulatory requirements. Petitioners contend that the Attorney General (“AG”) cannot adequately represent their specific interests in energy efficiency and renewable energy because the AG is tasked with representing all consumers and all of their diverse, and at times conflicting, public interests and because Petitioners are uniquely positioned to share their expertise with the Commission.

On December 1, 2011, LG&E and KU filed a response objecting to Petitioners’ request for full intervention. The Companies argue that the request should be denied because it was not timely made, noting that Petitioners had knowledge of the instant matter but waited more than two months to seek to intervene. The Companies contend

that the untimely delay in requesting intervention has already complicated and disrupted the proceedings in that Petitioners have failed to comply with the deadline for issuing supplemental requests even though they have attempted to serve such discovery to the Companies by attaching the data requests to their petition. The Companies contend that Petitioners do not have the right to issue discovery requests prior to the Commission's grant of full intervenor status.

The Companies contend that Petitioners' claimed special interest in energy efficiency and renewable resources is no different than that of any of the Companies' customers and that those interests are adequately represented by the AG, who is a party to these proceedings. The Companies assert that Petitioners lack any interest in this proceeding as neither Sierra Club nor NRDC are customers of the Companies. Although they could represent that interest on behalf of their members, Petitioners nevertheless failed to name any customer who they purport to represent in this matter.

The Companies further contend that Petitioners have provided no evidence of their ability to present issues or develop facts that will assist the Commission. The Companies point out that Petitioners have failed to provide any indication that they have ever issued, evaluated, or had to make actual business decisions based on the results of a request for proposals. The Companies contend that Petitioners' concerns over environmental and health impacts, as well as national economic consideration, are issues that are outside the scope of the Commission's jurisdiction.

Lastly, the Companies argue that Petitioners' intervention would only serve to complicate and disrupt this proceeding as evidenced by Petitioners actions in the Companies' Environmental Compliance Recovery ("ECR") proceedings, which are

currently pending before the Commission.<sup>1</sup> In particular, the Companies took exception to Petitioners' modeling due to Petitioners' use of nominal values rather than real values, which, according to the Companies, rendered the modeling results useless. Had the parties to the ECR proceedings not arrived at a unanimous settlement of all the issues in those cases, the Companies contend that this "wasteful evidentiary conflict would have consumed days of hearing."

On December 5, 2011, Petitioners filed a reply in support of their request for intervention. They argued that their stated interest is in the promotion of a full examination of the requests for proposals to ensure that the Companies have selected the most cost-effective option. Petitioners reiterated that their interests are not adequately represented by the AG, given that the AG has to balance the interests of all classes of ratepayers and the AG's objectives may depart from that of Petitioners. Specifically, Petitioners state that their interest in this matter is ensuring that the Companies have fully assessed all reasonable and prudent alternative resource supply, including energy efficiency and demand-side management.

Petitioners disagree with the Companies' characterization that they failed to add value to the Companies' current ECR proceedings. Petitioners note that, although their

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<sup>1</sup> Case No. 2011-00161, Application of Kentucky Utilities Company for Certificates of Public Convenience and Necessity and Approval of its 2011 Compliance Plan for Recovery by Environmental Surcharge (filed June 16, 2011); and Case No. 2011-00162, Application of Louisville Gas and Electric Company for Certificates of Public Convenience and Necessity and Approval of its 2011 Compliance Plan for Recovery by Environmental Surcharge (filed June 16, 2011).

initial modeling run contained nominal values rather than real values, they corrected the error and were still able to demonstrate the risk involved concerning one of the proposed projects and that, through that analysis, Petitioners were able to help “Kentucky ratepayers avoid making a \$225 million bad investment in retrofitting the Brown coal-fired plant.”

Concerning the Companies’ argument that the intervention request is untimely, Petitioners assert that the existing procedural schedule did not establish a deadline for intervention requests, that they filed their petition well in advance of the close of discovery, and that they intend to file direct testimony by the December 20, 2011 deadline.

#### DISCUSSION

Having reviewed the pleadings and being otherwise sufficiently advised, the Commission finds that the only person who has a statutory right to intervene in a Commission case is the AG, pursuant to KRS 367.150(8)(b). Intervention by all others is permissive and is within the sound discretion of the Commission.<sup>2</sup>

In the recent unreported case of *EnviroPower, LLC v. Public Service Commission of Kentucky*, No. 2005-CA-001792-MR, 2007 WL 289328 (Ky. App., Feb. 2, 2007), the Kentucky Court of Appeals ruled that “the PSC retains the power in its discretion to grant or deny a motion for intervention,” but that this discretion is not unlimited. The Court then enumerated the limits on the Commission’s discretion in ruling on motions for intervention; one arising under statute, the other arising under regulation. The

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<sup>2</sup> *Inter-County Rural Electric Cooperative Corporation v. Public Service Commission of Kentucky*, 407 S.W.2d 127, 130 (Ky. 1996).

statutory limitation, KRS 278.040(2), requires that “the person seeking intervention must have an interest in the ‘rates’ or ‘service’ of a utility, since those are the only two subjects under the jurisdiction of the PSC.”<sup>3</sup>

The regulatory limitation is set forth in 807 KAR 5:001, Section 3(8), which requires a person to demonstrate either (1) a special interest in the proceeding which is not otherwise adequately represented in the case, or (2) that intervention is likely to present issues or develop facts that will assist the Commission in fully considering the matter without unduly complicating or disrupting the proceedings.

In analyzing the instant petition to intervene, we find that neither the Sierra Club nor the NRDC is a customer of either LG&E or KU. Thus, Petitioners lack the requisite statutory interest in the rates and service of KU or LG&E. However, Petitioners do request to intervene on behalf of members of their respective organizations who are KU and LG&E customers. To the extent that the NRDC and Sierra Club seek to address issues that impact the rates or service of KU and LG&E, such as whether the proposed construction of a 640 MW natural gas combined cycle combustion turbine and the purchase of three natural gas simple cycle combustion turbines offered by the utilities are reasonable and cost-effective, those issues are within the scope of the Commission’s jurisdiction and this proceeding. Thus, the NRDC and Sierra Club, as representatives of their members who are customers of KU or LG&E, have an interest in the rates and service of KU and LG&E and in these proceedings, and that interest is sufficient to satisfy the statutory limitation for intervention under KRS 278.040(2). We note, however, that Petitioners have failed to provide the names and addresses of its

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<sup>3</sup> 2007 WL 289328 at 3.

members who are customers of either KU or LG&E and whose interests Petitioners purport to represent in this matter. Accordingly, the Commission will grant Petitioners intervention subject to the provision of such information.

With respect to the regulatory limitation upon intervention as set forth in 807 KAR 5:001, Section 3(8), the Commission is not persuaded by Petitioners' claims that they have a special interest that is not otherwise adequately represented. While Petitioners certainly have an interest in promoting energy efficiency and renewable energy resources, they have not established how their interest in these issues differs from the interest of all other KU and LG&E customers or how the AG's representation is not adequate to protect their interest.

The Commission is, however, persuaded that the NRDC and Sierra Club, acting on behalf of their Kentucky members, do possess expertise on issues that are within the scope of this proceeding, such as whether generation supply options proposed by KU and LG&E are reasonable and cost-effective in light of a full range of available alternatives. The Commission notes that the NRDC and Sierra Club have intervened in similar proceedings in other states and that Petitioners are represented by experienced counsel. Therefore, the Commission finds that intervention by Petitioners is likely to present issues or develop facts that will assist in the review of KU's and LG&E's CPCN request without unduly complicating or disrupting the review.

IT IS THEREFORE ORDERED that:

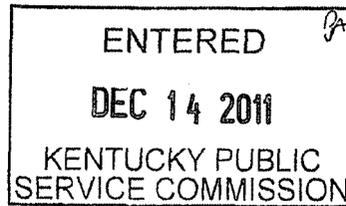
1. Petitioners' request for full intervenor status is granted subject to the provision contained in ordering paragraph 2 of this Order, and Petitioners shall accept the existing procedural schedule.

2. Within five days of the date of this Order, Petitioners shall file with the Commission the names and addresses of their members whose interests Petitioners are representing in this matter and identify whether they are customers of LG&E or KU.

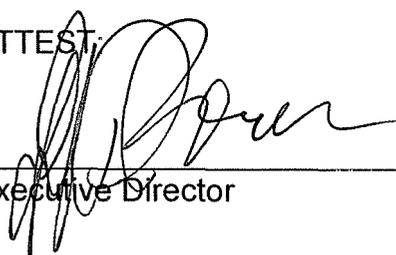
3. Petitioners shall be entitled to the full rights of a party and shall be served with the Commission's Orders and with filed testimony, exhibits, pleadings, correspondence, and all other documents submitted by parties after the date of this Order.

4. Should Petitioners file documents of any kind with the Commission in the course of this proceeding, Petitioners shall also serve a copy of said documents on all other parties of record.

By the Commission



ATTEST:

  
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Executive Director

Case No. 2011-00375

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